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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,414	09/26/2003	Scott Thomas Loughran	9369	8429

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EXAMINER

GHALI, ISIS A D

ART UNIT	PAPER NUMBER
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1615

MAIL DATE	DELIVERY MODE
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09/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/672,414

Applicant(s)

LOUGHRAN ET AL.

Examiner

Isis A. Ghali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-21 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-21 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f):
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The receipt is acknowledged of applicants' amendment and request for RCE, both filed 01/11/2007.

Claims 4 and 22 have been canceled.

Claims 1-3, 5-21 and 23 are pending and included in the prosecution.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/27/2007 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 23 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 23 recites "the embossment comprises a colored ply adhesive", and applicants referred to page 5, lines 17-20 and figure 1 for support, however, recourse to figure 1 and page 5, lines 17-20, no support for "the embossment comprises a colored ply adhesive" as recited by claim 23. In page 5, lines 17-20, applicants stated:

"As shown in Fig. 1, an embodiment of a fibrous structure product 10 comprises a discrete non-verbal cue 12, represented by a heart, wherein the outline of the heart comprises colored ply bond adhesive. The fibrous structure product 10 further comprises additional embossments which 20 may or may not comprise colored ply bond adhesive.

Therefore, the colored ply adhesive is provided only in the outline of the heart, i.e. outline of embossment.

In accordance to MPEP 714.02, applicant should specifically point out to where in the disclosure a support for any amendment made to the claims can be found.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The present claim 1 is drawn to fibrous structure having cue in the form of embossment comprising visual cue comprising a non-white color agent.

5. Claims 1-3, 17-20, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 98/50482 ('482).

WO '482 disclosed multiply absorbent article with pigmented adhesive positioned between the two plies that is formed of cellulosic fibers (abstract; page 4, lines 5-6; page 6, lines 3, 10, 26). The pigmented adhesive reads on non-verbal cue. The reference disclosed that the plies are embossed and the embossment is colored at least in one ply (page 6, last paragraph). The reference implies more than one pigment, and even if one pigment is white, then the other is non-white.

6. Claims 1-3, 17-20, 23 are rejected under 35 U.S.C. 102(b) as being anticipated by US 3,684,949 ('641).

US '641 disclosed laminated creped tissue providing pleasant pattern of visible coloration i.e. non-verbal cue (abstract; col.1, lines 24-26; claim 1). Creped tissue reads on embossment. The tissue is cellulose fibers (col.2, lines 25-28). Tissue comprises more than single ply attached by adhesive (col.2, lines 41-42). US '641 at col.3, lines 65-75 disclosed the plies have multiplicity of depression and projections, i.e. are embossed. The embossed plies having dyes or pigments such as ink (col.2, lines 62-70), ink is inherently non-white color.

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7. Claims 1-3, 17-20, 23 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,503,318 ('076).

US '076 disclosed multicolored printed laminate, wherein the laminate includes fibrous webs attached by plurality of discrete colored adhesive in emboss pattern, non-verbal cue (abstract). The reference disclosed multicolored printing, and this teaching implies that even if one color is white, then the other is non-white. The reference disclosed ink which is inherently a non-white color.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 1-3, 17-20, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,672,949 ('949).

US '949 teaches laminated creped tissue having high absorbent properties, softness, and strength (abstract; col.1, lines 28-32, 55-59). The tissue is fabric, i.e. fibrous (col.1, lines 60-62). Tissue comprises more than single ply attached by adhesive applied in a pattern in discrete spots, i.e. non-verbal cue (col.2, lines 11-25, 70-71). The reference disclosed that the plies are embossed (col.7, lines 44-46; col.8, claim 1).

The difference between US '949 and the present invention is that the US '949 does not teach the embossment comprising non-white color agent.

It has been held by the court that aesthetic changes that have no mechanical function cannot be relied upon to patentability distinguish the claimed invention from the prior art. See *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

Therefore, the white color of the embossment does not impart patentability to the claims, absent evidence to the contrary.

11. Claims 1-3, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,325,768 ('768).

US '768 disclosed laminated creped fibrous web material with embossed pattern i.e. non-verbal cue (abstract).

The difference between US '768 and the present invention is that the US '949 does not teach the embossment comprising non-white color agent.

It has been held by the court that aesthetic changes that have no mechanical function cannot be relied upon to patentability distinguish the claimed invention from the prior art. See *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

Therefore, the white color of the embossment does not impart patentability to the claims, absent evidence to the contrary.

12. Claim 12-16 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of WO '482, US '949, US '641, US '786, or US '076, each in view of US 2004/0118530 ('530).

The teachings of WO '482, US '949, US '641, US '786, or US '076 are discussed above.

However, the references do not teach the properties of the product as claimed in claims 12-16, or the package of the product as claimed in claim 21.

US '530 teaches facial or bath tissue or wipe product comprising fibrous material and patterned indicia (abstract; paragraphs 0009, 0013, 0014). The wipe is configured to provide the appropriate material to provide different physical properties including softness, strength, toughness, and absorbency (paragraph 0049). The products are packaged for eventual sale to the consumer (paragraph 0048).

One having ordinary skill in the art at the time of the invention would have been motivated to provide the product disclosed by any of WO '482, US '949, US '641, US '786, or US '076, and make the product having softness, strength, toughness, and absorbency as disclosed by US '530 by selecting the materials of the product and

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indicate the properties of the product on the indicia disclosed by the reference, motivated by the fact that the product has many desirable physical properties and advertising the properties may attract the consumer and increase the sale rate, with reasonable expectation of better attraction to the consumer and better sale rate.

Further, one having ordinary skill in the art would have been packaged the product disclosed by any of WO '482, US '949, US '641, US '786, or US '076 as disclosed by US '530, motivated by the teaching of US '530 that packaging make the product ready for eventual sale, with reasonable expectation of having a packaged product.

13. Claims 1-3, 5-21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,221,211 ('211) in view of US '768.

US '211 teaches multi-ply tissue product containing indicia to indicate the presence of some unique ingredients within the tissue product (abstract). The reference disclosed facial and bath tissue and the indicia are coloring or printing on the internal ply surface, i.e. contacting the glue (col.1, lines 20-30). The tissue comprises more than one fibrous plies that are glued together (col.1, lines 39-45; col.2, lines 34-41). The indicia are color other than white or decorative pattern (col.2, lines 13-23). The indicia include ingredients such as emollient, moisturizers, softening agent, menthol (aromatherapy), cleansing agent and fragrance (col.2, lines 42-44, 53-58; col.4, lines 59-64).

US '211 does not teach the non-verbal cue as embossment as instantly claimed by claim 1.

US '768 teaches laminated creped fibrous web material with embossed pattern i.e. non-verbal cue (abstract). Embossment provides the desired bulk and aesthetic appearance of the web (col.4, lines 3-4, 14-16).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide multi-ply tissue product having non-verbal cue as disclosed by US '211, and further add embossment to the plies as disclosed by US '768, motivated by the teaching of US '768 that such embossment provides the desired bulk and aesthetic appearance of the product, with reasonable expectation of having multi-ply tissue product having non-verbal cue in form of embossment that provides bulk and aesthetic appearance to the product.

However, the combined teaching of US '211 and US '768 does not explicitly teach the specific ingredients as claimed in claims 7-9, the indicia indicating properties of the product as claimed in claims 12-16, or the package of the product as claimed in claim 21.

US '211 teaches emollient, moisturizers, cleansing agent and softening agent that encompass all chamomile, aloe and vitamin E, and one having ordinary skill in the art at the time of the invention would have selected the specific ingredient according to the specific intended use, motivated by the logic of the pharmaceutical art.

Further, one having ordinary skill in the art at the time of the invention would have been motivated to provide the unique properties of the product on the indicia disclosed by the reference, motivated by the fact that listing of the properties will reveal

the hidden advantages of the product, with reasonable expectation of better attraction to the consumer and better selling rate.

Further, one having ordinary skill in the art would have packaged the product disclosed by US '211 motivated by the general knowledge to one skilled in the art that packaging protects the product during storage and handling, with reasonable expectation of having the product of US '211 in a package.

14. Claims 12-16 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over US '211 in view of US '768 and further in view of US 2004/0118530 ('530).

The combined teachings of US '211 and US '768 are discussed above, however, the combination does not teach the properties of the product as claimed in claims 12-16, or the package of the product as claimed in claim 21.

US '530 teaches facial or bath tissue or wipe product comprising fibrous material and patterned indicia (abstract; paragraphs 0009, 0013, 0014). The wipe is configured to provide the appropriate material to provide different physical properties including softness, strength, toughness, and absorbency (paragraph 0049). The products are packaged for eventual sale to the consumer (paragraph 0048).

One having ordinary skill in the art at the time of the invention would have been motivated to provide the product disclosed by the combined teaching of US '211 and US '768, and make the product having softness, strength, toughness, and absorbency as disclosed by US '530 by selecting the materials of the product and indicate the properties of the product on the indicia disclosed by the reference, motivated by the fact

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that the product has many desirable physical properties and advertising the properties may attract the consumer and increase the sale rate, with reasonable expectation of better attraction to the consumer and better sale rate. Further, one having ordinary skill in the art would have been packaged the product disclosed by the combined teaching of US '211 and US '768 as disclosed by US '530, motivated by the teaching of US '530 that packaging make the product ready for eventual sale, with reasonable expectation of having a packaged product.

Response to Arguments

15. Applicant's arguments filed 06/27/2007 have been fully considered but they are not persuasive.

Applicants traverse the anticipatory rejection over WO '482 by arguing that the reference failed to teach the embossment comprising visual cue comprising non-white color agent.

In response to this argument, applicants' attention is directed to scope of the present claim 1 which is drawn to fibrous structure having cue in the form of embossment comprising visual cue comprising a non-white color agent. WO '482 clearly teach non-verbal cue created by pigments and embossment. The reference disclosed on page 6, last paragraph that the adhesive composition comprises pigment applied to the embossment of one ply, i.e. embossment of other plies may not contain pigments, implying that two colors are present, and if even one is white, then the other is non-

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white. The present claims are directed to a product, and all the elements of the product are disclosed by the reference.

Applicants traverse the anticipatory rejection over US '641 by arguing that the reference does not teach non-white agent.

In response to this argument, applicants' attention is directed to teaching of US '641 at col.2, lines 62-70, wherein the reference teaches dyes including ink, and ink is inherently non-white.

Applicants traverse the anticipatory rejection over US '076 by arguing that the reference does not teach non-white color agent.

In response to this argument, it is argued that the reference disclosed multicolored printing, and this teaching implies that even if one color is white, then the other is non-white. The reference disclosed ink which is non-white color.

Applicants argue that US '949 and US '786 do not teach the embossment comprising non-white agent.

In response to this argument, it is argued that the color does not impart patentability to the claims, absent evidence to the contrary. It has been held by the court that aesthetic changes that have no mechanical function cannot be relied upon to patentability distinguish the claimed invention from the prior art. See *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

Applicant's Applicants traverse obviousness rejection over the combination of US '211, US '768 and US '530 by arguing that the combination does not teach embossment and non-white color agent.

In response to this argument, applicants' attention is drawn to the teaching of US '211 teaches facial and bath tissue comprising indicia that are color other than white. The combination of US 211 and US '768 teaches the indicia. The present invention as a whole is taught by the combined teachings of the references. It is well established that the claims are given the broadest interpretation during examination. A conclusion of obviousness under 35 U.S.C. 103 (a) does not require absolute predictability, only a reasonable expectation of success; and references are evaluated by what they suggest to one versed in the art, rather than by their specific disclosure. *In re Bozek*, 163 USPQ 545 (CCPA 1969). In the light of the foregoing discussion, the Examiner's ultimate legal conclusion is that the subject matter defined by the claims would have been obvious within the meaning of 35 U.S.C. 103 (a).

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isis A. Ghali whose telephone number is (571) 272-0595. The examiner can normally be reached on Monday-Thursday, 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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IG

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